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No. 469

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

COASTAL PETROLEUM COMPANY, a Florida corporation,
Petitioner,

v.

CLAUDE R. KIRK, JR., Governor of the State of Florida; TOM ADAMS, Secretary of State; EARL FAIRCLOTH, Attorney General; FRED O. DICKINSON, JR., State Comptroller; BROWARD WILLIAMS, State Treasurer; FLOYD T. CHRISTIAN, Superintendent of Public Instruction; DOYLE CONNER, Commissioner of Agriculture, as and constituting the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioners pray that a Writ of Certiorari issue to review the decision of the District Court of Appeal, First District, State of Florida, entered in the above entitled case on November 15, 1966, rehearing of which was denied on February 7, 1967, and petition for Writ of Certiorari was denied by the Supreme Court of Florida on May 16, 1967.

CITATION TO DECISION BELOW

The decision of the Supreme Court of Florida denying Certiorari is reported at — So.2d —, and is set forth in the appendix, infra, p. 1a. The decision of the District Court of Appeal, First District is reported at 194 So.2d 71, and is set forth in the appendix, infra, p. 2a et seq. The decision of the District Court of Appeal, First District, denying the petition for rehearing is reported at 194 So.2d 75, and is set forth in the appendix, infra, p. 10a, et seq. The decision of the Circuit Court of the Second Judicial Circuit, in and for Leon County (R. 434), is set forth in the appendix, infra, p. 13a et seq.

JURISDICTION

The judgment of the Supreme Court of Florida denying a petition for Writ of Certiorari was entered on May 16, 1967. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257 (3), Petitioners having asserted below and asserting here deprivation of rights secured by the Constitution of the United States.

QUESTION PRESENTED

In a proceeding for a declaratory judgment seeking to establish leasehold rights solely with respect to Lake Hancock, the trial Court found that the pertinent contracts gave Petitioner the mineral rights to Lake Hancock. The District Court of Appeal reversed and ruled that Petitioner not only was not entitled to Lake Hancock, which was the single question before it, but the court further concluded that Petitioner was entitled only to water bottoms of named rivers and lakes.

On these facts, in Petitioner's view the following question is presented:

Was it a deprivation of property without due process of law as guaranteed by the Fourteenth Amendment, for an appellate court to go completely beyond the question tried below and raised on appeal, and confiscate Petitioner's leasehold rights to water bottoms adjacent to named rivers and to all lakes not named in the documents without once affording Petitioner the right to offer evidence and to be heard on these issues?

CONSTITUTIONAL PROVISIONS INVOLVED

1. This case involves the Fourteenth Amendment of the Constitution of the United States.

2. This case involves the following section of the Declaration of Rights of the Constitution of the State of Florida:

> "Section 12. Double Jeopardy; self-incrimination; eminent domain; right to work.—No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. . . ."

STATEMENT OF CASE

Respondents are the successors in office to the parties defendant below. In 1941 Petitioner's predecessor in interest entered into an exploration contract with the Trustees of the Internal Improvement Fund of the State of Florida (R. 8-15). Out of this original exploration contract there evolved, inter alia, Drilling Lease No. 224-B, As Modified, dated February 27, 1947

(R. 37-57). The validity of these contracts was established by the Supreme Court of Florida, en banc, in *Watson* v. *Holland,* 20 So.2d 388 (1944); rehearing denied, January 31, 1945; and Petitioner's rights with respect to certain minerals were determined in *Collins* v. *Coastal Petroleum Co.,* 118 So.2d 796 (Dist. Ct. of App. 1st Dist. 1960), certiorari discharged, 125 So.2d 300 (Sup. Ct. Fla. 1960).

In order to determine if Lake Hancock, a 3500 acre meandered body of sovereign, navigable, inland water in Polk County, Florida, which Lake is the headwater of Peace River, was a water bottom covered by Drilling Lease No. 224-B, as modified, Petitioner, on August 27, 1965, filed a complaint for Declaratory Judgment (R. 1) in the Circuit Court of the Second Judicial Circuit, in and for Leon County (In Chancery, No. 20492). The sole question before the Chancellor, by agreement of the parties and the court[1] and consequently the only matter on which testimony and evidence were offered was, simply, is the bottom of Lake Hancock included within the territorial scope of Drilling No. 224-B, as modified, in which lease the Trustees conveyed to Petitioner, inter alia, "Also the bottoms of *and water bottoms adjacent to* the rivers hereinafter named . . ." (Emphasis added).

The Chancellor, after a full and complete hearing, ruled on December 17, 1965, that: (R. 443; App. p. 23a)

> "1. The bottom of Lake Hancock in Polk County is included within the public bottoms described in Lease No. 224-B, as modified, executed February

[1] See Record, Pages 315, and 391-392 wherein the issue was spelled out during the hearing.

27, 1947, between the Trustees of the Internal Improvement Fund of Florida and Coastal Petroleum Company, a corporation."

The Trustees appealed this decree determining the leasehold rights to the bottom of Lake Hancock, by filing a Notice of Appeal on February 15, 1966. (R. 444). The District Court of Appeal, First District, State of Florida, reversed the Chancellor, and stated: (App. p. 10a)

> "We conclude that the lease documents meant exactly what they said; that is, that the water bottoms covered included only those rivers and lakes named therein. Since Lake Hancock was not named, it was not included; on the contrary, it was specifically excluded by the words, 'Peace River to Township 29/30.'
>
> Reversed."

Thus by one stroke of the pen, the appellate court not only reversed the decree with respect to Lake Hancock, but confiscated from Petitioner lease rights covering vast areas of land by completely excising from the conveyancing language of the lease the phrase "water bottoms adjacent to" the named rivers. The question of lakes, other than Lake Hancock, was not tried in the lower court nor raised on appeal, yet the appellate court concluded that only named lakes were covered by the lease; the question of bottoms adjacent to named rivers was not tried in the lower court nor raised on appeal, yet the appellate court concluded that only the water bottoms of named rivers were included.

HOW THE CONSTITUTIONAL QUESTION AROSE

The Constitutional question of taking property without due process of law arose when the District Court of Appeal ruled with respect to matters not heard in the trial court nor raised on appeal. Petitioner sought then to have that decision reviewed by filing a Petition for Writ of Certiorari with the Supreme Court of Florida, which Petition was denied (App. p. 1a). Consequently, Petitioner has never had a hearing on the question herein raised.

ARGUMENT

This case presents the rather unique situation wherein the claimed denial of due process resulted from the action of the appellate court, not from the action of the trial court. By an obvious misreading of the lease the District Court of Appeal took from Petitioner leasehold rights to land which rights were not before the trial court, thereby depriving Petitioner of property without due process of law. The Supreme Court of Florida in the exercise of its discretion refused to grant a Petition for Writ of Certiorari, so if a grave miscarriage of justice is to be prevented, this Court must now grant the Petition for Writ of Certiorari .

Under Drilling Lease No. 224-B, as modified, between the Trustees of the Internal Improvement Fund of the State of Florida and Petitioner, the Trustees leased to Petitioner, inter alia, (R. 40) "Also the bottoms of and water bottoms adjacent to the rivers hereinafter named . . ." In order to determine whether Lake Hancock was encompassed by this politically con-

troversial lease,[2] Petitioner initiated a declaratory judgment proceeding, which terminated in a finding that the mineral rights to Lake Hancock did belong to Petitioner. No other questions were raised, nor was evidence received on other issues, yet in reversing the decision, the District Court of Appeal, not only concluded that Lake Hancock was not within the purview of the lease, but also went off on a frolic of its own and confiscated (1) all unnamed lakes, and (2) the water bottoms adjacent to the named rivers. Such action seemingly gives truth to the old maxim—"*Aliam perdit qui lege agit de vacca*"—if you go to court about a cow it will cost you another cow.

"The fundamental requisite of due process of law is the opportunity to be heard." *Grannis* v. *Ordean*, 234 U.S. 385. (1914) "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

It is patently obvious that Petitioner was never given an opportunity to be heard on the questions (1) whether or not its drilling lease covered "water bottoms adjacent to" named rivers, and (2) whether or not its lease covered any unnamed lakes other than Lake Hancock. Before the appellate court could take

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[2] See, for instance, the series of three articles in the Fort Myers News-Press, on December 28, 29, & 30, 1966, or Senate Bill No. 658 and its companion, House Bill 1125, which were introduced in the Florida Legislature earlier this year.

back for the State the two potentially vast areas which were clearly given by the lease, the court, at least, should have (1) remanded with instructions to receive additional evidence, or (2) better still, restricted itself to the appeal. As was said in *Ohio Bell Telephone Co.* v. *Public Utilities Comm.*, 301 U.S. 292 (1937), "The fundamentals of a fair trial were denied to the appellant when rates previously collected were ordered to be refunded upon the strength of evidential facts not spread upon the record." In rejecting the argument that the Petitioner did not object, the Court went on to say, "As there was no warning of such a course, so also there was no consent to it. We do not presume acquiescence in the loss of fundamental rights."

This Court made it clear in *Morley Construction Co.* v. *Maryland Casualty Co.*, 300 U.S. 185 (1937) that the appellate court was not at liberty to substitute a new form of relief for that granted by the trial court. And in *Ramming Real Estate Co.* v. *United States*, 122 F.2d 892 (8th Cir. 1941) the court noted, "The general rule, subject to certain exceptions not here material, is that the appellate court will consider only such questions as were raised and preserved in the lower court."

"In our jurisprudential system, trial and appellate processes are synchronized in contemplation that review will normally be confined to matters appropriately submitted for determination in the court of first resort." This statement was recently made by the U. S. Court of Appeals for the District of Columbia in refusing to pass on an issue raised for the first time in the appellate court. *Miller* v. *Avirom*, — U.S. App. D.C. —, — F.2d — (No. 20,639 decided June 28,

1967). In a footnote to the above statement the court further admitted: "We lack original jurisdiction and are not equipped to handle trial functions. Thus our review is necessarily conducted on the record made in the trial court, with the benefit of its consideration of the problems." By itself raising issues and then ruling on them, the District Court of Appeal in Florida committed most egregious error.

Petitioner has been conducting its operations in the area involved under Drilling Lease No. 224-B, as modified, since shortly after the lease was executed more than twenty years ago. It was never doubted that the lease's perspicuous language "the bottoms of and water bottoms adjacent to the rivers hereinafter named . . ." included the myriad lakes, ponds, marshes and bogs in the immediate vicinity of each named river. Pretermitting the question of whether Lake Hancock is included as being a water bottom adjacent to Peace River (the only question tried below), the Court's attention is invited to the U. S. Geological Survey map in the back of this Petition. This map, selected at random to illustrate the gravamen of our argument, shows a portion of Peace River, a river named in the lease. The map is submitted as a graphic demonstration of the denouement of the decision below which held "that the water bottoms covered included only those rivers and lakes named" in the lease, while ignoring the exact wording of the lease, "the bottoms of and water bottoms adjacent to the rivers hereinafter named . . ." Applying this language to the enclosed map, or to any other map of many such areas encompassed within this lease, the devastating and improbable effect becomes readily apparent. For instance, English Lake, located at the top of the map, which is within 400 feet

of Peace River, would apparently be excluded since it is not a lake named in the lease. Handcock Lake, located above English Lake at the top of this map (distinguished from the large Lake Hancock about which the trial was concerned) actually is contiguous to Peace River but again is not named in the lease, and therefore, would apparently be excluded from the area covered by the lease. Are the leased areas so ephemeral that the mere acts of giving the euphemism "Lake" to a small body of water which was formerly a part of Peace River, and then giving such lake a name, thereby remove such areas from the water bottoms conveyed by the Lease? When the appellate court below read out of the Lease "water bottoms adjacent to rivers" named, it effectively confiscated the lease rights to thousands of acres of water bottoms—without Petitioner having had notice and an opportunity to be heard as to such a reclaim from the Lease. Clearly confiscation is violative of the Constitution. *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 589 (1942). Thus Petitioner has lost all "Lakes" no matter how small or how close to the named rivers, and has lost all of the water bottoms as yet unnamed, which are adjacent to these rivers—all without ever having its day in court on these issues. The exclusion of Petitioner from these areas by the Trustees' arrant dixit could not have been a more flagrant violation of Petitioner's right to due process than is the appellate court's action. Lease rights to vast areas of valuable or potentially valuable oil, gas, and mineral deposits are involved, and they must not be confiscated unless and except by orderly judicial process.

In its opinion reversing the Circuit Court, the District Court of Appeal discusses various terms in the

lease, such as "water bottoms adjacent to." However, the opinion is less than clear, even considering the opinion on the petition for rehearing which the court issued, in its words, "For the sake of clarity . . ." Nonetheless, the opinion, in the final paragraph, clearly continues to state:

> "We conclude that the lease documents meant exactly what they said; that is, that the water bottoms covered included only those rivers and lakes named therein. Since Lake Hancock was not named, it was not included; on the contrary, it was specifically excluded by the words, 'Peace River to Township 29/30.'
>
> REVERSED"

Whatever confusion may exist concerning the court's opinion, it appears to us clear, for this case and for all future cases involving these lease documents, which cover more than 4.5 million acres of land and thereby comprise the largest lease in the United States, that "the water bottoms covered included only those rivers and lakes named therein." Any court in the future will be forced to apply this conclusion, and to exclude unnamed lakes and water bottoms adjacent to named rivers, despite the fact that the lease in question specifically provided that Petitioner was entitled to all water bottoms adjacent to the named rivers as well as the bottoms of the named rivers themselves. If these vast areas can be confiscated without any semblance of due process, then Petitioner is left with no recourse whatsoever unless this honorable Court will see fit to accord to Petitioner the relief it deserves.

CONCLUSION

WHEREFORE, petitioner prays that the petition for writ of certiorari be granted and the judgment below be reversed or modified.

Respectfully submitted,

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APPENDIX

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1967
TUESDAY, MAY 16, 1967

DISTRICT COURT OF APPEAL, FIRST DISTRICT

CASE No. 36,283

COASTAL PETROLEUM COMPANY, a Florida corporation,
Petitioner,

v.

HAYDON BURNS, ETC., ET AL., *Respondents,*

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JULY TERM, A. D. 1966.

CASE No. H-329

HAYDON BURNS, Governor of the State of Florida; RAY E. GREEN, State Comptroller; BROWARD WILLIAMS, State Treasurer; EARL FAIRCLOTH, Attorney General; DOYLE CONNER, Commissioner of Agriculture, as and constituting the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, *Appellants*,

v.

COASTAL PETROLEUM COMPANY, a Florida corporation, *Appellee*.

Opinion filed November 15, 1966.

An Appeal from the Circuit Court for Leon County.

Hugh M. Taylor, Judge.

Earl Faircloth, Attorney General; and J. Kenneth Ballinger, Assistant Attorney General, for Appellants.

Ervin, Pennington, Varn & Jacobs, and Macfarlane, Ferguson, Allison, Kelly and Himes, for Appellee.

Not Final Until Time Expires to File Rehearing Petition and Disposition Thereof If Filed

RAWLS, Chief Judge.

The Trustees of the Internal Improvement Fund appeal from a final declaratory decree holding that the water bottom of Lake Hancock was included within an oil and mineral lease executed by the Trustees to Coastal Petroleum Company.

The sole question on this appeal is whether Lake Hancock was included within the terms of Drilling Lease No. 224-B as Modified.

In order to construe the lease instrument it is necessary to review the history of same. In 1941 the Trustees of the Internal Improvement Fund believed that there was a possibility of discovering oil in the coastal waters of Florida which could result in royalties to the State. Toward this end they granted exploration contracts containing options to lease to various companies covering the coastal areas on the Gulf of Mexico, but the trustees had previously decided unanimously that they would *not* accept any applications for exploration contracts in the Atlantic areas north of the northern limits of Monroe County.

On July 29, 1941, Arnold Oil Exploration, Inc., through its president Mr. Arnold, requested an exploration contract covering a Gulf area commencing at the Apalachicola Bay and running to a point below Charlotte Harbor, and he also requested Lakes Okeechobee, Kissimmee, Istokpaga, Tohopekaliga, East Tohopekaliga, Apopka, George, Weir and Lochloosa. These lakes drain into the Atlantic Ocean or are a part of the Atlantic watershed. Pursuant to this request Arnold Oil was granted Exploration Contract #224 covering the coastal area requested but not the requested lakes. This contract granted exploration rights and an option to lease state-owned water bottoms of three classifications:

"Off Shore Areas:

"All water bottoms of the Gulf of Mexico within three (3) leagues (10.36 Statute Miles) of the ordinary high water mark . . .

"Bays, Sounds, Bayous:

"All submerged lands and water bottoms in all bays, sounds, and bayous . . .

"Rivers and Lakes:

"The bottoms of and water bottoms adjacent to any such Rivers and Lakes as are specifically named herein

and which flow through natural channels into the Gulf of Mexico, as follows:.

"Myakka, Manatee . . . [Naming 24] Peace . . . Rivers." *No lakes are named.*

The Contract then classifies the state-owned water bottoms: Class (a) as coastal off shore areas, Class (b) as bays, bayous, sounds, and "Class (c): Inland waters, shall consist of *all rivers and lakes named herein, together with all connecting sloughs, arms and overflow lands located in such waters.*" (Emphasis supplied.) In specifying the size of each exploration unit it provides:

"An exploration unit in Class (c) shall be limited in area to one river or one lake (except where rivers and/or lakes are within ten (10) miles of one another, in which case *all rivers and/or lakes so existing and named herein* shall be included in one unit), *together with all sloughs, and overflow or submerged lands, located therein and connected therewith,* owned by the State." (Emphases supplied.)

Exploration Contract #224 does not mention the word "river" or "lake" in any other place other than those quoted herein. With the exception of the general provision to be included in all contracts,[1] each time the phrase "rivers

[1] In order to protect State Parks the Trustees voted to include a general provision in all contracts providing for elimination of any areas that might conflict with State Park and Forest property. This general provision appears in Exploration Contract #224, to wit:

"It is specifically understood and agreed that this contract shall not apply to any lake, whether named herein or not, lying within, or partially within, the boundaries of any State Park, nor shall this contract apply to those parts of any river or stream, whether named herein or not, within the boundaries of any State Park, nor to the upstream portion of any river or stream passing into or through any such State Park."

and lakes" is included it is limited by the words "named herein."

Six days after the execution of the Exploration Contract the Trustees discussed whether or not the lake bottom areas were a part of Mr. Arnold's original proposal, and it was their unanimous opinion throughout the negotiations that the lake bottoms were not to be included in the contract of Mr. Arnold and that the Trustees were not then considering leasing any new areas.

In 1942 Arnold applied for an Exploration Contract covering the St. Johns River and 12 designated lakes on the basis of hardship since he had already made tentative explorations in these areas. At a meeting of the Trustees private persons protested leasing Lakes Monroe, Harney, Jessup, and Puzzle and without debate these protested lakes were excluded by the Trustees. Thereupon Arnold was granted a separate contract, No. 248, covering the named lakes and part of the St. Johns River.

In 1946 there was considerable debate among the Trustees as to whether Arnold was entitled to exercise his option for oil and mineral leases on the property designated in the exploration contracts due to his failure to completely comply with the terms of the contracts. However, pursuant to Exploration Contract #224, Drilling Leases 224-A and 224-B were executed after the Trustees heard letters of protest and determined that laws enacted in 1945 were sufficient to control oil wells in a manner which would preserve the valuable beaches of the coastal communities.

Thereafter, Arnold Oil transferred its interest to Coastal Petroleum Company. About the same time litigation between the U. S. and the State of California involving title to oil rights of California Tidewater Lands, threw a cloud on Florida's title to a portion of the Gulf bottoms covered in the leases 224-A and B. For this reason and because other provisions of the leases "appear difficult of construc-

tion, and require clarification as between the said parties," Drilling Lease No. 224-B as Modified and Drilling Lease No. 224-A as Modified were executed on February 27, 1947. These modified leases differed in a number of ways from the Exploration Contract and the original leases particularly in the type of water bottoms to be contained in each drilling block. The modified leases provided for the first time that all state-owned water bottoms of all three classes shall be contained in each specified drilling block.

Drilling Lease No. 224-B as Modified describes the three types of water bottoms covered as (1) areas of the Gulf of Mexico, (2) bays, sounds and bayous of the Gulf, and (3):

> "Also the *bottoms of and water bottoms adjacent to the rivers hereinafter named* which flow through natural channels in the Gulf of Mexico, to wit: Myakka, Manatee, Little Manatee, Alafia, Caloosahatchee (from its mouth to LaBelle Bridge), *Peace River to Township 29/30,* included within said Drilling Blocks 5, 6, 7 and 8 as shown on said map." (Emphases supplied.)

It was by his construction of this section that the Chancellor found that Lake Hancock was a "water bottom adjacent to" Peace River. We compared the first phrase underlined above with the words from the Exploration Contract wherein it describes the water bottoms covered therein as follows:

> "The bottoms of and water bottoms adjacent to *only such Rivers and Lakes as are specifically named herein* and which flow through natural channels into the Gulf . . ." (Emphasis supplied.)

We note that almost the same wording is used except the lease leaves out the words "and lakes," and it limits the Peace River to the line between Townships 29 and 30, which is a point south of Lake Hancock. In two other places the modified lease refers to the inland water bottoms covered

therein. First, in describing what bottoms shall comprise each drilling block, the lease lists (1) Gulf bottoms, (2) bays, bayous and sounds, and (3) "all rivers and lakes *named herein,* together with all connecting sloughs, arms and overflow lands located in such waters." (Emphasis supplied.) Secondly, in specifying which drilling block these inland waters will be considered a part, the modified lease stated:

> "All rivers, sloughs, arms and overflow lands included in the above blocks are to be considered a part of that particular drilling block into which the respective river, slough, arm or overflow land drains or empties."

We find it difficult to construe the words "bottoms of and water bottoms adjacent to the rivers hereinafter named" to include Lake Hancock as a portion of Peace River for several reasons.

It is admitted that Lake Hancock is not mentioned in any of the lease documents but is a sovereign body of navigable water meandered by the government and within the jurisdiction of the Trustees. It is also admitted that Lake Hancock is the headwater of Peace River and flows through natural channels into the Gulf of Mexico. Lake Hancock does not flow directly into Peace River. Instead it drains into Cohanzy Creek which flows into Peace Creek which empties into Peace River. The southern portion of Peace River, from its mouth northward to the line between Townships 38/39, is meandered and within the jurisdiction of the Trustees. However, Peace River north of Township 38/39 is not meandered and does not belong to the State. That is, Peace River for a distance of 40 miles south of Lake Hancock is in private ownership.

In all the pertinent documents rivers and lakes are referred to in a context indicating that the parties considered them two separate entities. In that portion of the instruments describing the water bottoms in which the

oil and mineral rights are conveyed, in each and every instance where the words "rivers" and "lakes" are mentioned, they are followed by the words "specifically named herein", "hereinafter named" or words of similar import. Furthermore, these documents contain additional descriptive phraseology that offers a reasonable and logical explanation as to what is meant by the words "water bottoms of and water bottoms adjacent to the rivers hereinafter named." These explanatory words are "together with all connecting sloughs, arms and overflow lands." To construe this phrase, which appears twice in both the modified lease and the Exploration Contract, to include a lake which feeds a river would be to defy the accepted and usual meaning of the terms chosen by the parties. Webster's New Collegiate Dictionary defines "arm" as "an inlet of water, as from the sea," and defines "inlet" as "a recess in a shore; a narrow strip of water running into the land or between islands; . . . That which is let in . . ." Therefore, since the river does not back up into or feed Lake Hancock, the lake is not an inlet or "arm" of the river.

We find that oil and mineral rights in Lake Hancock were not conveyed by the lease instruments. Had the contract and lease intended to include all state-owned water bottoms which were connected by natural streams to the named rivers, they could have easily done so rather than using all the additional descriptive words. Furthermore, if no credence is given to the words "Peace River to Township 29/30," can the lessees also ignore the other limitations contained in the leases such as "Caloosahatchee from its mouth to LaBelle Bridge" and "that part of St. Johns River, South of Lake Puzzle?" Our conclusion gives full effect to all words chosen and used by the parties in the contracts.

We do not find the lease sufficiently indefinite to justify relying upon extrinsic evidence. However, the extrinsic evidence introduced is consistent with our conclusion.

The basic premise of the chancellor's decision hinges upon a letter written by Arnold to the Trustees on October 4, 1941, the day the Exploration Contract was executed, in which he said:

> "Your Honorable Board has elected to exclude all lakes and rivers, the waters of which do not drain into the Gulf of Mexico from the contract being executed in our favor."

The chancellor found that this letter clearly implied that the Exploration Contract of October 4, 1941, did include those lakes which drain into the Gulf. In so holding he overlooked the fact that all the lakes requested by Arnold were those which drained into the Atlantic, and in that year, 1941, the Trustees had already agreed that they would not grant Exploration Contracts in the Atlantic area north of Monroe County, although they were eager to have the Gulf areas explored and leased. We find the wording in the letter indicated that if the lakes requested by Arnold had been ones draining into the Gulf, the Trustees would have considered such requests as to named lakes on an individual basis; however, no such specific proposal was furnished by Arnold.

The chancellor also relied upon a statement appearing in the Trustees' minutes concerning an abatement of rentals on lands to which the State's title was clouded due to the California decision which affected only tidelands. At the Trustees' request their engineer F. C. Elliott prepared a report to facilitate their determination of the amount of abatement due Coastal under its leases. This report set forth a judgment estimate of the number of acres contained in each of the same three classifications designated in the Exploration Contract—the third classifications being Rivers and Lakes. The Trustees discussed whether abatement of rentals applied to that classification and decided that it did not. We do not find that this report or discussion adds any insight as to the intent of the parties.

We conclude that the lease documents meant exactly what they said; that is, that the water bottoms covered included only those rivers and lakes named therein. Since Lake Hancock was not named, it was not included; on the contrary, it was specifically excluded by the words, "Peace River to Township 29/30".

REVERSED.

WIGGINTON and CARROLL, DONALD K., JJ., Concur.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JANUARY TERM, A. D. 1967.

CASE No. H-329

HAYDON BURNS, Governor of the State of Florida; RAY E. GREEN, State Comptroller; BROWARD WILLIAMS, State Treasurer; EARL FAIRCLOTH, Attorney General; DOYLE CONNER, Commissioner of Agriculture, as and constituting the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, *Appellants*,

v.

COASTAL PETROLEUM COMPANY, *Appellee*.

Opinion filed February 7, 1967.

An Appeal from the Circuit Court for Leon County.

Hugh M. Taylor, Judge.

Earl Faircloth, Attorney General; and J. Kenneth Ballinger, Assistant Attorney General, for Appellants.

Ervin, Pennington, Varn & Jacobs, and Macfarlane, Ferguson, Allison, Kelly and Himes, for Appellee.

On Petition for Rehearing

RAWLS, Chief Judge.

Appellee Coastal Petroleum Company has filed a lengthy petition for rehearing which indicates that this

court's decision is not clear to the Appellee in several respects. It complains in particular that this court failed to give credence to the testimony of Appellee's expert witness who testified that Lake Hancock is located within the limits of Drilling Block 5. For the sake of clarity the following is added.

Our holding recognized that if the Exploration Contract gave Appellee's predecessor the option to lease Lake Hancock, and that option was properly exercised, then the Lake could not be excluded from the lease.[1] However, the Exploration contract did not give the lessee an option on all waterbottoms owned by the State within the territories described but only those specified therein. These included "bottoms of and water bottoms adjacent to *only* such Rivers *and* Lakes as are specifically named" which included Peace River. It further provided, "the areas covered by this contract shall be . . . all rivers and lakes named herein, together with all connecting sloughs, arms and overflow lands located in such waters." The verbiage chosen by the parties shows a clear intent that rivers and lakes are two separate entities, and that the adjacent water bottoms included in the contract are all connecting sloughs, arms and overflow land of Peace River. Should any doubt exist asto whether this construction is correct, it is alleviated by the more definite description appearing in the lease.

The stated purpose of Drilling Lease No. 224-B as Modified was to clarify former provisions which appeared difficult of construction, and it made clear that Lake Hancock was not included in the Drilling Lease by granting rights in the water bottom of Peace River only to Township 29/30.

This brings us to the testimony of Appellee's expert that Lake Hancock is within the limits of Drilling Block 5. If Lake Hancock is part of Peace River, as Appellee contends,

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[1] See Collins v. Coastal Petroleum, 118 So. 2d 796 (Fla. App. 1st, 1960).

it is in Drilling Block 7 under the explicit terms of the lease.

The northern and southern boundaries of each drilling block are described in the lease as a "*projection westward from the shore of the township line*" designated. The map attached to the lease designates the northern and southern boundaries of each block by a heavy line projecting *westward* from the mainland and passing only through coastal and intracoastal waters to a point 10.36 statute miles seaward from the outermost land, which is the western boundary. The lease further provides that all rivers are to be considered a part of the drilling block into which they empty. Peace River empties into Charlotte Harbor in Drilling Block 7. Therefore, all of Peace River which was conveyed, whether it be directly east of Drilling Blocks 5 or 6 or where ever located, is a part of Drilling Block 7.

The lease describes the western, northern, and southern boundaries as *lines* (the last 2 projecting *westward* from the shore), but it describes the eastern boundary thusly: "the eastern boundary shall include the *areas* as described in Exploration Contract." That contract provides, "the *areas* covered by this contract shall be . . . Inland waters, [which] shall consist of all rivers and lakes named herein, together with all connecting sloughs, arms . . ." We conclude Drilling Block 7 has within its eastern boundary Peace River from its mouth to Township 29/30. A construction of the least [sic] which allows the northern and southern boundaries of the Drilling Blocks to project not only *westward* from the shore but also *eastward* so as to allow not only that part of Peace River south of Township 29/30 but also that part north thereof to be included in the lease, would be tantamount to rewriting the explicit terms of the contract.

We adhere to our former opinion as clarified herein. The petition for rehearing is denied.

WIGGINTON and CARROLL, DONALD K., J.J., Concur.

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA.
IN CHANCERY.

No. 20492.

COASTAL PETROLEUM COMPANY, a Florida corporation,
Plaintiff,

v.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, ET AL., *Defendants.*

Final Decree

This is one more in a long series of cases involving the validity and construction of certain leases executed by the Trustees of the Internal Improvement Fund authorizing exploration for and production of minerals from sovereignty bottoms.

On October 4, 1941, the Trustees granted to Arnold Oil Explorations, Inc., an "exploration contract for oil, gas and minerals and option to lease." Out of this initial contract and a similar contract authorized January 6, 1942, relating to certain named lakes, there eventually evolved three drilling leases bearing numbers 224-A, 224-B, and 248, which, as modified on February 27, 1947, constitute the formal evidence of the present rights of the plaintiff, Coastal Petroleum Company, successor to Arnold Explorations, Inc. The word "plaintiff" will be used to indicate either corporation owning the contract rights referred to at the time mentioned.

The basic validity of the contracts was established in Watson v. Holland, 20 So. 2d. 388.

The scope of the rights granted in relation to the minerals which might be produced was determined in Collins v. Coastal Petroleum Co., 118 So. 2d. 796.

At least a partial settlement of difference between the parties as to what substances were embraced in the term

"minerals" was reached in Coastal Petroleum Co. v. Bryant, Circuit Court, Leon County #18569.

The present litigation requires a determination of the territorial scope of the lease numbered 224-B, specifically as to whether or not it embraces Lake Hancock, a meandered body of navigable inland water in Polk County, the bottom of which is admittedly sovereignty lands.

Peace River (or Creek) runs a little less than two miles south of Lake Hancock, and the lake is drained into Peace River by a stream called Cohanzy Creek. Peace River runs southerly from Lake Hancock and empties into the Gulf of Mexico through Charlotte Harbor.

Lease No. 224-B contains the following grant:

> ". . . . Trustees, under authority of Chapter 20680, Laws of Florida, Acts of 1941, have leased, and by these presents do hereby lease, unto said Lessee . . . those certain areas referred to in said Exploration Contract as Drilling Blocks and more particularly described as follows, to wit:
>
> "All water bottoms of the Gulf of Mexico within three leagues (10.36 statute miles) of the ordinary high water mark of the outermost shore included within Drilling Blocks 5, 6, 7 and 8 inclusive as said drilling blocks appear upon a map which is attached hereto and made a part of this lease.
>
> "Also all submerged lands and water bottoms of all bays, sounds and bayous of the Gulf, and adjacent Government waterfront lots contiguous to the water bottoms of the Gulf of Mexico herein first described in Drilling Blocks 5, 6, 7 and 8 as said drilling blocks appear upon a map which is attached hereto and made a part of this lease.
>
> "Also the bottoms of and water bottoms adjacent to the rivers hereinafter named which flow through

natural channels in the Gulf of Mexico, to wit: Myakka, Manatee, Little Manatee, Alafia, Caloosahatchee (from its mouth to LaBelle Bridge), Peace River to Township 29/30, included within said Drilling Blocks 5, 6, 7 and 8 as shown on said map.

"The Lessor finds and it is agreed that Lease 224-B prior to modification was intended to include all lands submerged and unsubmerged which were included in Lease 224-B prior to modification including but not by way of limitation all areas described therein as Drilling Blocks 14-A to 24-A inclusive, Drilling Blocks 1-B to 7-B inclusive, the south portion of Drilling Block 8-B and all of Drilling Blocks 1-C and 2-C are included herein.

"This lease covers the area included between the northern boundary of Lease 224-B prior to modification, which is the projection westward from the shore of the township line between Townships 25 and 26 South; the southern boundary of said lease prior to modification, which is Latitude 26° North; the western, off-shore boundary, shall be a line 10.36 statute miles seaward from the outermost land; the eastern boundary shall include the areas as described in Exploration Contract No. 224, dated October 4, 1941.

"Drilling Block No. 5 of said lease shall include the area as follows:

"Bounded on the north by the southern boundary of Lease No. 224-A prior to modification, which is the projection westward from the shore of the township line between Townships 25 and 26 South; on the south by the projection westward from the shore of the township line between Townships 31 and 32 South; the western, or off-shore boundary, shall be a line 10.36 statute miles seaward from the outermost land; the eastern boundary shall include the area as described in Exploration Contract No. 224, dated October 4, 1941.

"Drilling Block No. 6 of said lease shall include the area as follows:

"Bounded on the north by the southern boundary of Drilling Block No. 5 as herein defined; on the south by the western projection from the shore of the township line between Townships 38 and 39 South; the western, or off-shore boundary, shall be a line 10.36 statute miles seaward from the outermost land; the eastern boundary shall include the area as described in Exploration Contract No. 224, dated October 4, 1941.

"Drilling Block No. 7 of said lease shall include the area as follows:

"Bounded on the north by the southern boundary of Drilling Block No. 6 as herein defined; on the south by the western projection of the township line between Townships 44 and 45 South; the western, or off-shore boundary, shall be a line 10.36 statute miles seaward from the outermost land; the eastern boundary shall include the area as described in Exploration Contract No. 224, dated October 4, 1941.

"Drilling Block No. 8 of said lease shall include the area as follows:

"Bounded on the north by the southern boundary of Drilling Block No. 7 as herein defined; on the south by the southern boundary of Lease No. 224-B prior to modification, which is Latitude 26° North; the western, or off-shore boundary, shall be a line 10.36 statute miles seaward from the outermost land; the eastern boundary shall include the area as described in Exploration Contract No. 224, dated October 4, 1941.

"All rivers, sloughs, arms and overflow lands included in the above blocks are to be considered a part of that particular drilling block into which the respective river, slough, arm or overflow land drains or empties.

"The lease and its subdivision into drilling blocks are shown on a map attached hereto and made a part hereof.

"Each drilling block shall comprise all coastal off-shore areas of the Gulf of Mexico, together with all bars, islands and adjacent Government waterfront lots contiguous thereto; all bays, bayous, sounds and inlets of the Gulf, together with all connecting sloughs, flats and/or the overflow and/or submerged lands, all bars and islands and all adjacent Government water-front lots contiguous to such areas; all rivers and lakes named herein, together with all connecting sloughs, arms and overflow lands located in such waters."

It will be readily observed that the language employed to describe the area, the public bottoms of which are included in the lease, is none too definite. The Court is of the opinion that the most specific language is that found in the underscored paragraph. This paragraph delineates a substantial area of the State the public bottoms in which are subject to the lease and provides four boundaries of the area sought to be described:

1. A "north" line corresponding to the township line between Townships 25 and 26 south. This line may be readily located.

2. The "south" line is equally definite. It is Latitude 26° north.

3. The third or western boundary is not too difficult. It is an irregular line 10.36 miles west of and corresponding to the contour of the off-shore boundary of the outermost land constituting a part of the State of Florida.

4. The fourth boundary necessary to complete the description is a line that "shall include the areas described in Exploration Contract No. 224, dated October 4, 1941."

It will be observed that this description does not attempt to *adopt* the *description of land* contained in the Exploration Contract. It calls for a *line* that (when considered with the other three calls stated) will *include* the *areas* described in the Exploration Contract.

It is, therefore, necessary to refer to the Exploration Contract to locate the "areas" there described and then draw a line between the designated township line on the north and latitude line on the south so as to include those areas described in the Exploration Contract.

The Exploration Contract refers to three general types of bottoms being leased: "OFF-SHORE AREAS"; "BAYS, SOUNDS, BAYOUS"; and "RIVERS AND LAKES". Of course, the first two give us no aid in determining the east boundary of the land "areas" embraced in Lease No. 224-B. But the third type of bottoms referred to in the Exploration Contract is determined as follows:

> "RIVERS AND LAKES:
>
> "The bottoms of and water bottoms adjacent to only such Rivers and Lakes as are specifically named herein and which flow through natural channels into the Gulf of Mexico, as follows:
>
> "Myakka, Manatee, Litle Manatee, Alafia, Hillsboro, Anclote, Weekiwatchee, Crystal, Steinhatchee, Suwannee, Aucilla (from its mouth to natural bridge), Ochlocknee (from its mouth to the power dam), Wacissa (from its mouth to the South Boundary of Sec. 1, of Township 2, South of Range 3 East), Caloosahatchee (from its mouth to LaBelle bridge), Crooked, Carrabelle, Peace, Withalacoochee (from its mouth to the power dam), Homosassa, Price, Hollis, Little Homosassa, Salt and St. Martin's Rivers.
>
> "It is specifically understood and agreed that this contract shall not apply to any lake, whether named herein or not, lying within, or partially within, the

boundaries of any State Park, nor shall this contract apply to those parts of any river or stream, whether named herein or not, within the boundaries of any State Park, nor to the upstream portion of any river or stream passing into or through any such State Park."

An examination of this description in connection with a map which is attached to and made a part of Lease No. 224-B discloses that included in the list of rivers named is practically, if not literally, every river or creek emptying into the Gulf of Mexico which is large enough to be meandered for any part of its length *or* which is draining a lake of substantial size. Further examination of the map also clearly indicates that the topography of the area is such that a line can readily be drawn for the township line between townships 25 and 26 south and latitude 26° north which will include all those lakes and streams without including any lake or river that is drained eastward into Lake Okeechobee or the Atlantic Ocean.

It is probable that no two engineers called upon to locate this line would put it in exactly the same place. But they could not differ in its location to such an extent as to arrive at any different conclusion as to the location of any body of water with reference to the line. When the purpose of the line is considered, this meets all the accuracy needed to establish the rights of the parties.

The purpose of the description—the designation of that area of the State the public bottoms of which are included in the lease—is reasonably clear from an examination of the lease itself and the exploration agreement to which it refers.

It is doubtful if the description in the lease is sufficiently indefinite to justify extrinsic evidence to aid in determining its meaning. But the Court has received evidence from both parties.

Engineering testimony for the plaintiff clarifies the ability to accurately locate the area described in the lease and that such area includes Lake Hancock.

Evidence on behalf of the defendants consists principally of showing that in the official U. S. Surveys Peace River was not meandered beyond a point a few miles from its mouth; that State and Federal land grants above this point do not except or exclude any part of Peace River so that the bottom of Peace River is privately owned for some forty miles below Lake Hancock.

The defendants take the position that Lake Hancock is not included within the terms of Lease 224-B for two reasons:

They argue that the description refers to "the bottoms of and water bottoms adjacent to the Rivers, etc." Based upon this clause of the lease and the proof that no part of the bottom of Peace River within 40 miles of Lake Hancock is sovereign bottoms and the fact that the reference to Peace River specifies "to Township 29/30" all combine to indicate that the lease was never intended to cover Lake Hancock which is not "adjacent" to any water bottoms *owned by the State* in any of the rivers named and is some 8 to 10 miles north of "Township 29/30". This argument cannot be accepted. It distorts and over-emphasizes parts of the lease. As is above noted, the paragraph of the lease which most clearly includes Lake Hancock refers back to the exploration agreement which refers to Peace River in its entirety and describes the "water bottoms adjacent to . . . Peace" River. There is no requirement that all the bottoms leased be contiguous. Peace River runs within a comparatively short distance of Lake Hancock and is directly connected to the lake and receives the waters of the lake through Cohanzy Creek and empties them into the Gulf of Mexico.

The word "adjacent" has a somewhat flexible meaning and must be construed in the context in which it is used.

The Exploration Contract included the Gulf coast from St. George's Island near Apalachicola to a point in Collier County and the watersheds of a large number of rivers. In a contract relating to so vast an area it is more reasonable to construe the phrase "adjacent to . . . Peace" River as including Lake Hancock which lies less than two miles from Peace River and is drained directly into Peace River as being within the contemplation of the parties than otherwise.

The negotiations leading up to the contracts, the obvious purposes of the parties and nature of the subject matter fortify this conclusion.

The minutes of the Trustees show that negotiations began with an application for an Exploration Contract:

> "2. Arnold Oil Explorations, Inc: An area commencing at a line on the West between Ranges 8 and 9 West and running to Parallel 26 degrees North latitude, also in Lakes Okeechobee, Kissimmee, Istokpoga, Tohopekaliga, East Tohopekaliga, Apopka, George, Weir and Lochloosa."

This application, it will be observed, sought an Exploration Contract on the coastal area and certain very large lakes. The Exploration Contract entered into on the following October 4, 1941, embraced the Gulf coast area but did not include the lakes named in the original application. This caused plaintiffs much concern as is evidenced by a letter to the Trustees bearing date of October 4, 1941, in which it said: "Your Honorable Board has elected to exclude all lakes and rivers the waters of which do not drain into the Gulf of Mexico from the contract being executed in our favor."

This clearly implies that the Exploration Contract of October 4, 1941, did include those lakes which drain into the Gulf.

After some further negotiations the Trustees did lease to plaintiff the bottoms of nearly all the lakes requested in the original application plus some others, but in a separate lease—#248.

The net result is that the construction now placed upon the leases by the Trustees would indicate that they intended to lease to plaintiff the public bottoms of the Gulf, its bays and inlets, all navigable rivers flowing into the Gulf and the major lakes lying easterly of the Gulf watershed but did not intend to lease the smaller but navigable lakes draining into the Gulf through the named rivers.

Following this theory the Trustees take the position that no lakes are included in drilling lease #224-B. However, an examination of their minutes shows that on December 20, 1949, they considered Leases #224-A and #224-B. They received a report from their Engineer and Secretary, the late F. C. Elliott, in regard to these leases and certain abatement of rentals due to the Tidelands Decision. In that report Mr. Elliott listed in Lease #224-A, 9060 acres of "Rivers and Lakes" and in Lease #224-B, 11,560 acres of "Rivers and Lakes." The following also transpired:

> "Mr. Mayo asked if the lakes and rivers were being considered in the abatement of rentals, to which Mr. Caldwell replied that it did not; only lands designated as submerged off shore areas would be covered by the abatement clause."

Nothing could more clearly indicate that the Trustees considered that some lakes were within the terms of these leases. If any lake is embraced within the grant of Lease #224-B no reason appears to justify the exclusion of Lake Hancock.

If language in a contract is of doubtful meaning the courts will examine the circumstances under which the contract was entered into, the purposes for which the con-

tract was made and the means employed to accomplish these purposes in an effort to ascertain the intent of the contracting parties. When this is done the present position of the Trustees does not appear logical or reasonable.

During the years in which these contracts were negotiated and entered into and modified the obvious purpose of the plaintiff was to secure the right to explore for valuable minerals, primarily oil and gas but including others, on as large a part of the public bottoms of the State as possible to the end that it could explore for these minerals and, if they were found, have the exclusive right to exploit them on a royalty basis. The primary object of the State officials was to secure the necessary exploration to determine if these minerals existed and, if so, to encourage their development in the interest of the economy of the State. To accomplish these aims the parties made these contracts giving plaintiff exclusive rights on enormous areas subject to plaintiff making required exploration and paying specified rentals. Admittedly, these leases included all of the Gulf Coast from St. George's Island to a point in Collier County, the Gulf bottoms, and the bottoms of bays, inlets and navigable rivers flowing into the Gulf. These leases also included the major inland lakes. It is illogical to conclude that the parties intended to include all of these public bottoms and to exclude the small but navigable lakes which are found in the Gulf Coast watershed and which drain into the Gulf through the rivers which, to the extent owned by the State, were included in the leases.

It is, therefore,

CONSIDERED, ORDERED, ADJUDGED, DECREED and DECLARED:

1. The bottom of Lake Hancock in Polk County is included within the public bottoms described in Lease #224-B, as modified, executed February 27, 1947, between the Trustees of the Internal Improvement Fund of Florida and Coastal Petroleum Company, a corporation.

2. Nothing in this decree shall be construed as adjudging any right in the plaintiff in its explorations for or exploitation of any minerals in the bottom of Lake Hancock to in any way impair or infringe upon the riparian rights of persons owning land touching upon the said lake.

DONE in Chambers at Tallahassee, Leon County, Florida, this 17 day of December, A. D. 1965.

/s/ HUGH M. TAYLOR
Hugh M. Taylor
Circuit Judge

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

82°00'
27°07'30"
402000m. E.
R.23 E.
57'30" R. 24 E.
(NOCATEE)
55'
900000m. N.
T. 38 S.
T. 39 S.
Grass Lake
Hull
Hull Cem.
Ft Winder Ch
Horse Creek
Hull Creek
PEACE RIVER
Peace Creek
BR 13
BM 11
SEABOARD AIR LINE
ATLANTIC COAST LINE
Ft Ogden
Ft Ogden Cem.
BM

FT. OGDEN QUADRANGLE
FLORIDA
7.5 MINUTE SERIES (TOPOGRAPHIC)

BR 13
BM 11
SEABOARD AIR LINE
ATLANTIC
BM
Ft Ogden
Ft Ogden Camp
Lettuce Lake
BM
Southfort
Branch
Turnton
(MURDOCK SE)
BR 27
BR 34
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Ft Ogden
18
17
16
15
14
13
19
20
21
22
23
24
Southport
30
29
28
27
26
25
ATLANTIC
BM
BR 20
BR 34
(ARCADIA SE)

(MURDOCK)

2°30"

T. 39 S.

T. 40 S.

PEACE RIVER

Boca Grande Lake

DE SOTO CO

CHARLOTTE CO

Jim Long Lake

ATLANTIC COAST LINE

BM

Peace River

Myakka River

Myakka

25

30

29

28

36

31

32

33

1

2

6

5

4

12

7

8

9

DE SOTO CO
CHARLOTTE CO

T. 39 S.
T. 40 S.

BM 41

BM 24

Bunch

30 29 28 27 26 25

31 32 33 34 35 36

5 4 3 2

2'30"

DE SOTO CO.
CHARLOTTE CO.

T. 39 S.
T. 40 S.

Myakka River

Atlantic Coast Line

Morgantown

Whidden Bay

970 000 FEET

27°00'
82°00'

510 000 FEET

R. 23 E.

CLEVELAND 2.1 MI.
PUNTA GORDA 7.8 MI.

57'30"

R. 24 E.

(CLEVELAND)

55'

(PUNTA GORDA)

Mapped, edited, and published by the Geological Survey

Control by USGS and USC&GS

Culture and drainage in part compiled from aerial photographs taken 1951–1952. Topography by planetable surveys 1956

Polyconic projection. 1927 North American datum
10,000-foot grid based on Florida coordinate system, west zone
1000-meter Universal Transverse Mercator grid ticks,
zone 17, shown in blue

TRUE NORTH
MAGNETIC NORTH

APPROXIMATE MEAN DECLINATION, 1956

SCALE 1:24000

1 0 1 MILE

1000 0 1000 2000 3000 4000 5000 6000 7000 FEET

1 .5 0 1 KILOMETER

CONTOUR INTERVAL 5 FEET
DATUM IS MEAN SEA LEVEL

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U. S. GEOLOGICAL SURVEY, WASHINGTON 25, D. C.
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

DE SOTO CO
CHARLOTTE CO

T. 39 S.
T. 40 S.

R. 24 E.

(CLEVELAND)

55'

INTERIOR-GEOLOGICAL SURVEY, WASHINGTON, D. C.-1957-AMS
MR 6005

27°00'

81°52'30"

2987000m.N.

413000m.E.

SCALE 1:24000

1 0 1 MILE

1000 0 1000 2000 3000 4000 5000 6000 7000 FEET

1 .5 0 1 KILOMETER

CONTOUR INTERVAL 5 FEET
DATUM IS MEAN SEA LEVEL

ROAD CLASSIFICATION

Heavy-duty _____ Light-duty _____

Unimproved dirt - - - - - -

U. S. Route

FLORIDA

QUADRANGLE LOCATION

FT. OGDEN, FLA.

N2700—W8152.5/7.5

1956

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS

SUPREME COURT, U. S.

FILED

SEP 6 1967

JOHN F. DAVIS, CLERK

IN THE

Supreme Court Of The United States

October Term, 1967

No. 469

COASTAL PETROLEUM COMPANY, A Florida corporation,
Petitioner,

v.

CLAUDE R. KIRK, JR., Governor of the State of Florida; TOM ADAMS, Secretary of State; EARL FAIRCLOTH, Attorney General; FRED O. DICKINSON, JR., State Comptroller; BROWARD WILLIAMS, State Treasurer; FLOYD T. CHRISTIAN, Superintendent of Public Instruction; DOYLE CONNER, Commissioner of Agriculture, as and constituting the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Assistant Attorney General

Counsel for Respondents
The Capitol
Tallahassee, Florida

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TABLE OF CITATIONS

Burns v. Coastal Petroleum Company, 194 So. 2d 71 3

IN THE

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

ARGUMENT

The Attorney General of Florida, undersigned, opposes the Petition for Writ of Certiorari to the Supreme Court of Florida in this cause, and would show:

There is no constitutional question involved.

The Circuit Court of the Second Judicial Circuit in Leon County, Florida, (the Court of original jurisdiction) by its final decree, specified exactly what the question involved in the case then being tried before him was, in this language:

> "The present litigation requires a determination of the territorial scope of the lease numbered 224-B, specifically as to whether or not it embraces Lake Hancock, a meandered body of navigable inland water in Polk County, the bottom of which is admittedly sovereignty lands."

(Please refer to Appendix 14a of Petitioner's Brief.)

The able Circuit Judge, correctly we think, discussed the evidence before him, but he did note in his final decree that:

> "It is doubtful if the description in the lease is sufficiently indefinite to justify extrinsic evidence to aid in determining its meaning. But the Court has received evidence from both parties."

(Order of the Circuit Court, 19a, Appendix of Petitioner's Brief.)

The Circuit Judge's subsequent comment on the evidence was solely in the nature of a presentation of his reasoning in arriving at his conclusion and order that Lake Hancock was in truth and fact, contained within the property description specified in the several leases.

The appeal to the District Court of Appeal, First District of Florida, was taken by the Trustees of the Internal Improvement Fund. The Chief Judge of that Appellate Court, in the

opinion of the Court which reversed the Circuit Court, specifically, and we think conclusively, sounded the death knell of this Petition for Writ of Certiorari when he stated:

> "The sole question on this appeal is whether Lake Hancock was included within the terms of Drilling Lease No. 224-B as Modified.
>
> *Burns v. Coastal Petroleum Company,* 194 So. 2d 71. (Page 2a, Appendix of Appellant's Brief.)

Whatever was said thereafter by this Chief Judge of this First District Court of Appeal could only be considered as the Judge's reasoning that permitted the Court to arrive at its conclusion.

Patently, questions which are not presented, not litigated, not argued, or not decided, are not conclusive on the parties, and are not violative of any constitutional rights.

CONCLUSION

Respondents respectfully contend that no constitutional question is involved and that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General

T. T. TURNBULL
Assistant Attorney General

Counsel for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have furnished a copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Florida to counsel for the Petitioner, Honorable Frank Bezoni, P. O. Box 1531, Tampa, Florida, and, Honorable C. Dean Reasoner and Honorable E. Tillman Stirling, 800-17th Street, N. W., Washington, D. C., 20006, Attorneys at Law, by mail, this the ..... day of ....., 1967.

T. T. TURNBULL